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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/339,132 06/24/99 RAINEY

T 51810-1050

DAVID R RISLEY
THOMAS KAYDEN HORSTEMEYER & RISLEY LLP
100 GALLERIA PARKWAY NW
SUITE 1500
ATLANTA GA 30339

PM82/1004

EXAMINER

MAYO, T

ART UNIT

PAPER NUMBER

3673

DATE MAILED:

10/04/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/339,132

Applicant(s)
RAINEY, Thomas L.

Examiner
Tara L. Mayo

Group Art Unit
3673



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-17 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3673

DETAILED ACTION

1. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 3673.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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3. The abstract of the disclosure is objected to because it contains the word "means" on lines 5 and 7. Correction is required. See MPEP § 608.01(b).

4. The following changes to the specification have been made by informal Examiner's amendment: on page 1 at line 5, immediately following "1998" and prior to the period --, now U.S. Patent No. 6,089,793-- has been inserted.

Claim Objections

5. Claim 11 objected to because of the following informalities: potential rejection under 35 U.S.C. §112, second paragraph.

In claim 11 at line 1, delete "wall block" and insert therefor --retaining system--.

Appropriate correction is required.

Claim Rejections - 35 U.S.C. § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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7. Claim 17 is rejected under 35 U.S.C. 102(e) as being anticipated by Dawson (U.S. Patent No. 5,865,006).

Dawson '006 discloses a method for forming a segmental retaining wall, said method comprising the steps of:

(a) stacking a plurality of wall blocks (1) in aligned courses, a plurality of said wall blocks having a channel (12) formed therein; and

(b) securing at least one reinforcement member (31) to the wall with a retaining bar (16) that overlaps the reinforcement member within the channel;

(c) wherein the retaining bar secures the reinforcement member to the wall when tensile forces are imposed upon the reinforcement member. See Figs. 7, 8, and 16.

Claim Rejections - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1 through 7 and 10 through 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey (U.S. Patent No. 5,921,715).

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Rainey '715 discloses a wall block (14) for use in a segmental retaining wall system (10), said wall block comprising:

an interior face (16) for forming an interior surface of a segmental retaining wall;

an exterior face (22) for forming an exterior surface of the segmental retaining wall;

first and second sides (28) that extend from said exterior face to said interior face;

a top surface (26) and a bottom surface (24); and

retaining means comprising a channel (32) defined by a front wall, a rear wall, and a channel bottom surface and extending across one of said faces and surfaces;

wherein said channel is formed in said top surface of said wall block;

wherein said channel extends transversely across said top surface from said first side to said second side of said wall block;

wherein said channel is adapted to receive a reinforcement member retaining bar (34);

wherein said block is formed of a concrete material.

With respect to Applicant's recitation in claims 1 and 6 of rear and front walls each including inwardly extending shoulders, respectively, it would have been obvious to one of ordinary skill in the art of static structures at the time of invention to modify the device shown by Rainey '715 such that the channel would include rear and front walls each having an inwardly extending shoulder. The motivation for making the modification would have been to assist retention of the retaining bar.

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With respect to Applicant's recitation in claims 4 and 7, of rear and front wall shoulders each being formed as curved lips, respectively, it would have been obvious to one of ordinary skill in the art of static structures at the time of invention to modify the device shown by Rainey '715 such that the rear and front wall shoulders would each include a curved lip. The motivation for making the modification would have been to prevent shearing of an attached sheet of geotextile.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey (U.S. Patent No. 5,921,715) in view of Dawson (U.S. Patent No. 5,865,006)

Rainey '715, as modified above, discloses all of the features and, inherently, all of the method steps of the claimed invention with the exception of securing at least one reinforcement member to the retaining bar such that the retaining bar overlaps the reinforcement member within the channel.

Dawson '006 discloses a method for forming a segmental retaining wall, said method comprising the step of securing at least one reinforcement member (31) to a segmental retaining wall with a retaining bar (16) that overlaps the reinforcement member within a channel.

It would have been obvious to one of ordinary skill in the art of earth retention at the time of invention to modify the method disclosed by Rainey '715 such that it further include the step of securing at least one reinforcement member to the retaining bar such that the

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retaining bar overlaps the reinforcement member within the channel as taught by Dawson '006. The motivation for making modification would have been to include a means by which to stabilize backfill.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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12. Claims 1 through 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 3, 6, 12, 13, 14, and 15 of U.S. Patent No. 6,089,793. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims teach all of the features and method steps of the claimed invention as set forth in the instant application.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is (703) 305-3019. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Dunn Lillis, can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



JLM

30 September 2000



EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600